
(2010) 08 KL CK 0317
In the High Court Of Kerala
Case No : WA. No. 1370 of 2010

Rajaraman. E

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0317

Hon'ble Judges : Jasti Chelameswar, C.J;P.N.Ravindran, J

Bench : Division Bench

Advocate : T.C. Govinda Swamy, for the Appellant; P. Santhalingam, for the Respondent

Judgement

P.N. Ravindran, J.—The Appellant is the Petitioner in W.P(C) No. 24158 of 2010. The writ petition was filed challenging Ext.P1 order transferring the Petitioner, the Judicial Member of the Railway Claims Tribunal, Ernakulam, to the Railway Claims Tribunal, Bhuvaneswar. By judgment delivered on 3.8.2010 the learned single Judge dismissed the writ petition. The brief facts of the case are as follows.

2. The Appellant, a practicing advocate at Chennai was appointed as Member (Judicial) in the Bangalore Bench of the Railway Claims Tribunal by Ext.P2 order dated 29.11.2006. The appointment was for a period of five years from the date of joining the Railway Claims Tribunal or till the attainment of 68 years of age, whichever is earlier. The Appellant assumed office as Member (Judicial) in the Bangalore Bench of the Railway Claims Tribunal on 29.11.2006. Shortly thereafter he was transferred to Guwahati Bench of the Railway claims Tribunal and was relieved from Bangalore Bench on 5.4.2007. He assumed office at Guwahati on 23.4.2007. He thereafter represented against his transfer. Acting on the said representation he was transferred and posted as Member (Judicial) Railway Claims Tribunal, Ernakulam, where he assumed office in July, 2007. While the Appellant was functioning as Member (Judicial) Railway Claims Tribunal, Ernakulam, the Chairman of the Railway Claims Tribunal transferred and posted him as Member (Judicial) in the Railway Claims Tribunal at Bhuvaneswar by

Ext.P1 order dated 25.5.2010. Aggrieved by Ext.P1 order of transfer the Appellant filed O.A. No. 451 of 2010 in the Central Administrative Tribunal, Ernakulam Bench. By Annexure A order passed on 20.7.2010 the Central Administrative Tribunal dismissed the application. Incidentally the Central Administrative Tribunal also held, overruling the contention of the Respondents, that it has jurisdiction to entertain the application challenging the Appellant's transfer to Bhuvanewar.

3. Aggrieved by the order passed by the Central Administrative Tribunal dismissing O.A. No. 451 of 2010 the Appellant filed W.P(C) No. 22859 of 2010 in this Court. When the writ petition came up for hearing before a Division Bench of this Court, this Court passed Annexure B order dated 30.7.2010 to the effect that the pendency of the writ petition will not stand in the way of the Appellant seeking relief from other jurisdictions, if he is entitled to the same. The Division Bench expressed a doubt as to the competence of the Central Administrative Tribunal to entertain the dispute. Later, the Division Bench heard W.P(C) No. 22589 of 2010 and on 2.8.2010 reserved judgment in the matter. The Division Bench also passed Annexure C order to the effect that it will be open to the Appellant to seek other remedies as stated in the earlier order dated 30-7-2010. The instant writ appeal was thereupon filed challenging Ext.P1 order. It was contended that the transfer is not in the exigencies of service and that it is a colourable exercise of power. The Appellant contended that the posts of Member (Judicial) and Member (Technical) at Bhuvanewar have been lying vacant for the past several months and that by Ext.P3 order dated 26.2.2010 he was authorized to discharge the functions of Member (Judicial) at Bhuvanewar for ten working days every month, that as per the said order he has been discharging the functions of Member (Judicial) in the Railway Claims Tribunal, Bhuvanewar Bench for ten days a month and that if he is transferred from Ernakulam to Bhuvanewar, the Ernakulam Bench will be left without a Judicial Member. The learned single Judge repelled his contentions and held that the Chairman of the Railway Claims Tribunal is competent to transfer the Appellant. The writ petition was accordingly dismissed. Hence this writ appeal.

4. We heard Sri.K.R.B. Kaimal, learned Senior Advocate appearing for the Appellant, Sri.N.B. Sunil Nath, learned Counsel appearing for the first Respondent and Sri.P. Santhalingam, learned Senior Advocate appearing for Respondents 2 to 5. We have also gone through the pleadings and the materials on record. The learned Senior Counsel appearing for the Appellant, reiterating the contentions in the writ petition contended that the Appellant's transfer to Bhuvanewar is not in public interest or in the exigencies of service. The learned Counsel also contended that if the Appellant is transferred to Bhuvanewar, the Ernakulam Bench will cease to have the service of a Judicial Member. The learned Counsel also submitted that steps have been taken to appoint Judicial/Technical Members in various Railway Claims Tribunals including the Tribunal at Bhuvanewar and that the purpose sought to be achieved by transferring the Appellant can be achieved if the selection process is expedited. Per contra, Sri.P.

Santhalingam, learned Senior Advocate appearing for Respondents 2 to 5, submitted that as against 73 cases pending in the Ernakulam Bench more than 1000 cases are pending in the Bhuvaneswar Bench, that on account of the delay in completing the selection process the posts of Judicial/Technical Members at Bhuvaneswar Bench are lying vacant, that taking note of the large pendency of cases, the Chairman of the Railway Claims Tribunal decided to transfer the Appellant from Ernakulam to Bhuvaneswar and that the transfer was in the exigencies of service and in public interest. The learned Counsel appearing for the first Respondent submitted that nearly ten months have passed after the selection process commenced and that the selection process can be completed and the vacancies including those at Bhuvaneswar filled up expeditiously.

5. We have given anxious consideration to the rival contentions made at the Bar by the learned Counsel on either side. In the light of the admitted fact that the pendency in Ernakulam Bench is only 73 cases as against more than 1000 cases at Bhuvaneswar and the fact that the posts of Judicial/Technical Members at Bhuvaneswar have been lying vacant for the past several months, we are of the opinion that the order transferring the Appellant to Bhuvaneswar cannot be said to be one which is not in the exigencies of service or in public interest. The large pendency of cases at Bhuvaneswar is certainly a relevant consideration for the purpose of taking a decision as to whether the post of Judicial Member at Bhuvaneswar should be filled up by transferring an incumbent from another Bench. Further it is admitted that ever since February 2010, the Appellant has been discharging the duties of Judicial Member at Bhuvaneswar for ten days a month. In such circumstances we are not persuaded to agree with the Appellant that his transfer is not on administrative grounds. The Appellant was appointed for a period of five years with effect from 29.11.2006. The said period will come to an end on 28.11.2011. It is admitted that the selection process to fill up vacancies of Judicial/Technical Members in various Railway Claims Tribunals, including the vacancies at Bhuvaneswar, have been initiated and that nearly ten months have passed thereafter. Having regard to the facts and circumstances of the case we are of the opinion that the ends of justice will be met if the Respondents are directed to expedite the selection process and to fill up the vacancies of Judicial Member and Technical Member at Bhuvaneswar and various other Benches of the Railway Claims Tribunal and thereafter transfer the Appellant back to Ernakulam Bench. It will be open to the Appellant to submit a representation seeking transfer to a station other than Ernakulam and the competent authority among the Respondents shall in that event consider the same and take an appropriate decision thereon.

We accordingly dispose of the writ appeal with a direction to the competent authority among the Respondents to take steps to fill up the vacancies of Judicial/Technical Members in the various Benches of the Railway Claims Tribunal within four months from the date of receipt of a certified copy of this judgment and thereafter to transfer the Appellant back to Ernakulam Bench or to any other station of his choice. Till such time, the vacancy of Judicial Member at Ernakulam

shall not be filled up on a regular basis.